

EXPLANATORY MEMORANDUM TO

THE UNIVERSAL CREDIT (EXCEPTIONS TO THE REQUIREMENT NOT TO BE RECEIVING EDUCATION) (AMENDMENT) REGULATIONS 2021

2021 No. 1224

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to amend one of the exceptions to the requirement to not be receiving education which determines entitlement to Universal Credit (UC). This amendment provides that a person who is entitled to attendance allowance (AA), disability living allowance (DLA), child disability payment (CDP) or personal independence payment (PIP) must have been determined to have limited capability for work (LCW) before the person starts undertaking a course of education.
- 2.2 This amendment closes off a ‘workaround’ whereby an existing disabled student makes a claim to new-style (contributory) employment and support allowance (NS ESA) in order to be referred for a work capability assessment (WCA) so that, if the person is subsequently determined to have LCW, they could then claim and be entitled to UC - but this is contrary to the policy intent, as set out below at paragraphs 7.1 and 7.2.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is Great Britain.
- 4.2 The territorial application of this instrument is Great Britain.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 This instrument amends regulation 14(1)(b) of the UC Regulations 2013¹ to require that a person who is entitled to AA, DLA, CDP or PIP will only satisfy the exception under this regulation if they were determined to have LCW on a date before the date they started undertaking a course of education. Consequently, a person who has claimed NS ESA and been determined to have LCW will only meet this exception

¹ <https://www.legislation.gov.uk/ukSI/2013/376/regulation/14>

and be entitled to UC if they were determined to have LCW **before** they started undertaking a course of education, in the same way that a person on UC will only meet the exception if they were determined to have LCW before starting their course.

- 6.2 This instrument also amends regulations 19(2) and 19(4) of the Universal Credit (Transitional Provisions) Regulations 2014² to ensure that a disabled student who transitions to UC from old-style (income related) ESA (OS ESA) is treated as having LCW for the purposes of regulation 14(1)(b) of the UC Regulations.

7. Policy background

What is being done and why?

- 7.1 The policy intent is that it enables a disabled person already assessed as having LCW before they enter education, to then subsequently undertake a course of education and better their prospects of obtaining work and reduce, or end, their reliance on UC. In addition, the policy intent is to maintain continued support for a disabled person in education who transitions to UC from OS ESA which has different qualifying conditions for disabled students.
- 7.2 Prior to the coming into force of this instrument, a disabled person who had already started a course of education could circumvent the policy intent of regulation 14(1)(b) of the UC Regulations 2013 by obtaining a LCW determination **after** they had started their course. The person could then meet the requirements of this regulation, as then drafted, and be eligible for UC but this was contrary to the UC policy intent. This instrument rectifies this by requiring that a person who is entitled to AA, DLA, CDP or PIP must have been determined to have LCW before the person starts undertaking a course of education.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 Informal consolidated text or instruments is available to the public free of charge via the 'National Archive' website: www.legislation.gov.uk

10. Consultation outcome

- 10.1 The Department presented the draft regulations to the Social Security Advisory Committee (SSAC) on 13th October 2021. The Committee did not take the regulations on formal reference.

11. Guidance

- 11.1 Existing guidance will be reviewed and updated as necessary.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

² <https://www.legislation.gov.uk/ukSI/2014/1230/regulation/19>

- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because this change restores the policy intent. No, or no significant, impact on business, or the private, voluntary or public sector, is foreseen.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that the Department is firmly committed to continuously evaluating and monitoring the impact of its policies.
- 14.2 The instrument does not include a statutory review clause.

15. Contact

- 15.1 Mark Vidic at the Department for Work and Pensions, Telephone: 0113 3668072 or email: Mark.Vidic1@dwp.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Graeme Connor, Deputy Director for Universal Credit Policy at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Chloe Smith, Minister of State for Disabled People, Health and Work at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.